

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ESTATE OF ESPERANZA CONILL ZANETTI

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3621

Decision No. CU 6188

Counsel for claimant:

Pendry, Schneider and Hyde
By George W. Hyde, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$1,007,023.31 was presented by Enrique Carlos Zanetti on behalf of the ESTATE OF ESPERANZA CONILL ZANETTI based on the loss of unimproved and improved real property, bank accounts, stock interests in corporations in Cuba, bonds and household furniture and effects.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term "property" means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Section 502(1) of the Act defines the term "national of the United States" to mean "(A) a natural person who is a citizen of the United States, . . . The term does not include aliens."

Thus, in order for the Commission to favorably consider claims under Section 503(a) of Title V of the Act, it must be established (1) that the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking; and (2) that the claim arising as a result of such nationalization or other taking has been continuously owned thereafter in whole or in part by a national or nationals of the United States to the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1970).)

The record reflects that the first husband of decedent herein, ESPERANZA CONILL ZANETTI, was naturalized as a United States citizen on May 16, 1898. He married decedent on April 18, 1904 and thus she appears to have acquired United States nationality at this time. However, in decedent's Will, executed in Cuba on March 3, 1954 decedent stated that she was a citizen of Cuba. Decedent died on March 4, 1967 in New York and her second husband, as informant, stated decedent was a citizen of Cuba at her death.

By Commission letter of August 5, 1970 counsel was advised of the foregoing matter and that it was not clear if decedent retained the United States nationality which may have been acquired by marriage. Said letter


further pointed out that this issue was important since it appeared that the subject properties would have been taken prior to decedent's death and although her claim would pass to her heirs, assertedly United States nationals, the loss must have been owned by a United States national from the time the claim arose in order for it to be certifiable under the Act.

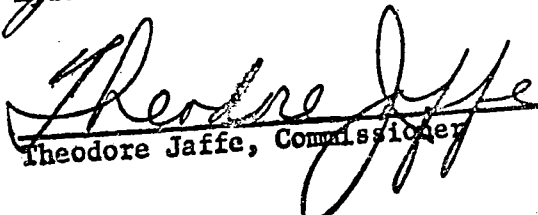
By letter of September 24, 1970 counsel advised the Commission that he was attempting to locate a possible passport of decedent. On March 19, 1971 counsel was advised to submit all suggested evidence within 20 days at which time it might become necessary to determine this claim on the basis of the present record. No additional evidence has been received to date.

The Commission finds that the evidence of record fails to establish that the property herein was owned by a national of the United States at the time of loss. The burden of proof has not been met. Thus the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

MAY 12 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended. (1970).)